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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,769	10/31/2003	Jerry Rolia	200300266-1	1824

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FORT COLLINS, CO 80527-2400

EXAMINER
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ZHE, MENG YAO

ART UNIT	PAPER NUMBER
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2195

MAIL DATE	DELIVERY MODE
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06/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/698,769

Applicant(s)

ROLIA ET AL.

Examiner

MengYao Zhe

Art Unit

2109

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 to 27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 to 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

This is the initial Office Action based on the 10/698769 application filed on 10/31/2003.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim 27 is rejected under 35 U.S.C. 101 because the claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

#### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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Claims 2 to 7 and 15 to 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The act of unfolding in claim 2 is not supported by the specification. Similarly, claims 3 to 7 and 15 to 20 are rejected.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 to 2, 6 to 12, 14 to 15, 19 to 25, and 27** are rejected under 35 U.S.C. 102(b) as being anticipated by Rottoo, Patent No. 5,933,417 (hereafter Rottoo).

**As per claims 1, 27, Rottoo teaches a method of governing access to resources in a computing utility facility, comprising:**

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**receiving a demand profile associated with an application that identifies the resources required from a pool of resources during one or more demand cycles;**

*(Column 4, lines 45 to 50: the query contains the demand profile.)*

**admitting an application to the computing utility facility if resources required for the application can be provided from the pool of resources in accordance with the demand profile and associated one or more demand cycles;**

*(Column 4, lines 50 to 67)*

**assigning available resources from the pool of resources in response to a request from the applications admitted to the computing utility facility**

*(Column 14, lines 50 to 60).*

**As per claim 14, it is an apparatus claim that contains all the necessary components to perform the method steps of claim 1, more specifically, a processor *(Column 7, lines 15 to 30: the controller corresponds to the processor)*, and a memory *(Column 7, lines 15 to 30: the database corresponds to the memory)*. Since claim 1 is rejected, claim 14 is rejected as well.**

**As per claim 2, 15, Rottow teaches wherein admitting the application further comprises:**

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**unfolding the one or more demand cycles from the demand profile associated with the application into time slots requiring resources from the pool of resources;**

*(Column 5, lines 15 to 22)*

**comparing the time slots requiring resources with a staging calendar of time slots representing availability of resources in the pool of resources;**

*(Column 5, lines 20 to 60: the two dimensional resource availability matrix corresponds to the staging calendar)*

**converting time slots from the staging calendar to a permanent calendar when comparison indicates the time slots requiring resources from the demand profile are available for assignment**

*(Column 14, lines 40 to 60: the updated database or the saved database corresponds to the permanent calendar.)*

**As per claim 6, 19, Rottoo teaches the method of claim 2 wherein converting time slots from the staging calendar to a permanent calendar comprises: copying the time slots from the staging calendar to the permanent calendar;**

*(Column 14, lines 30 to 60: eventually, reservation is made and the database is updated with the latest reservation.)*

**preallocating the requested resources from the pool of resources according to the permanent calendar schedule.**

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*(Column 14, lines 50 to 60)*

**As per claim 7, 20, Rottoo teaches the method of claim 2 wherein converting time slots from the staging calendar to a permanent calendar comprises: indicating the time slots in the staging calendar associated with the requested resources are permanent and not for staging purposes;**

*(Column 14, lines 45 to 56: a response to the sender with confirmed reservation is an indication that a permanent calendar had been made with the reservation in place.)*

**pre-allocating the requested resources from the pool of resources according to the permanent calendar schedule**

*(Column 14, lines 45 to 60: it is inherent that if reservation is made at a time slot, then the request will be allocated with corresponding resources.)*

**As per claim 8, 21, Rottoo teaches the method of claim 1 further comprising: policing requests for resources from the admitted applications to determine if the resources being requested are within an acceptable range**

*(Column 5, lines 20 to 60).*

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**As per claim 9, 22, Rottoo teaches the method of claim 8 further comprising:  
intercepting a request for resources from an application admitted to access a  
pool of resources;**

*(Column 4, lines 45 to 50: the reservation system takes in requests.)*

**determining if resource request is within an acceptable range of demands based  
upon the demand profile of the application;**

*(Column 5, lines 20 to 60)*

**indicating an application is not entitled to the request when the determination  
indicates the request is outside the acceptable range of demands;**

*(Column 5, lines 34 to 45: unavailability is indicated by 0 or 1.)*

**indicating an application is entitled to the request when the determination  
indicates an application is within the acceptable range of demands.**

*(Column 5, lines 34 to 45)*

**As per claim 10, 23, Rottoo teaches the method of claim 1 further comprising  
arbitrating the allocation of limited resources between two or more applications  
entitled to receive the requested resources.**

*(Column 4, lines 45 to 50: a query may contain required resources and flexible  
resources. Since those two different resources may be considered as two separate  
requests, they corresponds to two different applications.)*

**As per claim 11, 24, Rottoo teaches the method of claim 10 wherein the arbitration comprises: detecting a conflict in providing requested resources to two or more admitted applications entitled to receive the requested resources; determining if at least one application can forego receiving the requested resources causing the conflict for a predetermined period of time; instructing the at least one application to forego receipt of the requested resources for a period of time in accordance with the determination; allocating resources to the remaining admitted applications entitled to receive the requested resources in accordance with a priority scheme. (Column 5, lines 9 to 22; Column 8, lines 25 to 30: the flexible resource request has lower priority than the required resource request.)**

**As per claim 12, 25, Rottoo teaches the method of claim 11 wherein the priority scheme includes selecting admitted applications to receive the requested resources on a first-come-first-serve basis. (Column 14, lines 50 to 60: it is inherent that requests are booked on a first-come-first-serve bases. To wait for another query after booking a current query corresponds to first-come first-serve.)**

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 3, 4, 5, 16, 17, 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rottoo, Patent No. 5,933,417 (hereafter Rottoo) in view of Mashinsky, Patent No. 6,144,727 (hereafter Mashinsky).

**Rottoo teaches all of claim 2.**

**Rottoo does not teach**

**Claim 3, 4: unfolding the one or more demand cycles includes a caveat time cycle based upon an event that occurs over a long-period of time and**

**is selected from a set including special events, holidays, seasonal occurrences and emergencies.**

**Claim 4: wherein the caveat time cycle is based upon knowing when at least one particular event is going to occur in the future.**

**Claim 5: wherein unfolding the one or more demand cycles includes a demand cycle describing a demand for resources from a resource pool during weekdays and another demand cycle describing another demand for resources during weekends.**

**However, Mashinsky teaches**

**Claim 3, 4: unfolding the one or more demand cycles includes a caveat time cycle based upon an event that occurs over a long-period of time and is selected from a set including special events, holidays, seasonal occurrences and emergencies for the purpose of specifying usage patterns (Column 8, lines 30 to 45).**

**Claim 4: wherein the caveat time cycle is based upon knowing when at least one particular event is going to occur in the future for the purpose of specifying usage patterns (Column 8, lines 30 to 45).**

**Claim 5: wherein unfolding the one or more demand cycles includes a demand cycle describing a demand for resources from a resource pool during weekdays and another demand cycle describing another demand**

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**for resources during weekends** for the purpose of specifying usage patterns  
(*Column 8, lines 30 to 45*).

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have modified the invention of Rottoo with

**Claim 3, 4: unfolding the one or more demand cycles includes a caveat time cycle based upon an event that occurs over a long-period of time and is selected from a set including special events, holidays, seasonal occurrences and emergencies.**

**Claim 4: wherein the caveat time cycle is based upon knowing when at least one particular event is going to occur in the future.**

**Claim 5: wherein unfolding the one or more demand cycles includes a demand cycle describing a demand for resources from a resource pool during weekdays and another demand cycle describing another demand for resources during weekends.**

As taught in Mashinky, because it allows for specifying usage patterns (*Column 8, lines 30 to 45*).

**Similarly, claims 16, 17, 18 are rejected**, because Rottoo and Mashinky also teach the apparatus for the method as described above (*Rottoo: Column 7, lines 15 to 30; Mashinky: Fig. 14, Column 8, lines 30 to 45*).

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**Claims 13 and 26** are rejected under 35 U.S.C. 103(a) as being unpatentable over Rottoo, Patent No. 5,933,417 (hereafter Rottoo) in view of Eilam et al., Pub No. US 2004/0111509 (hereafter Eilam).

**As per claim 13, Rottoo teaches the method of claim 11 and**

**wherein the priority scheme includes selecting admitted applications to receive the requested resources in according to class of services factors**  
*(Column 4, lines 45 to 50: the required resource and flexible resources corresponds to class of services factors; Column 15, lines ).*

**Rottoo does not teach**

**wherein the priority scheme includes selecting admitted applications to receive the requested resources in according to economics.**

**However, Eilam teaches**

**wherein the priority scheme includes selecting admitted applications to receive the requested resources in according to economics for the purpose of using revenue to assign priorities** *(Paragraphs 26, 27, and 87)*

It would have been obvious to one having ordinary skill in the art at the time of the invention was made to have modified the invention of Rottoo with

**wherein the priority scheme includes selecting admitted applications to receive the requested resources in according to economics**

as taught in Eilam, because it can use revenue to assign priorities (*Paragraphs 26, 27, and 87*).

Similarly, Claim 26 is rejected as well because Rottoo and Eilam also teach the apparatus for the method as described above (*Rottoo: Column 7, lines 15 to 30; Eilam: Fig. 2; Paragraphs 26, 27, 33, 35, 84*).

### ***Conclusion***

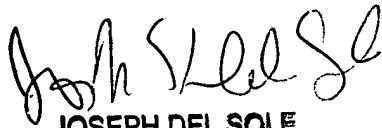
Any inquiry concerning this communication or earlier communications from the examiner should be directed to MengYao Zhe whose telephone number is 571-272-6946. The examiner can normally be reached on Monday Through Friday, 7:30 - 5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Del Sole can be reached on 571-272-1130. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.Z.

  
JOSEPH DEL SOLE  
SUPERVISORY PATENT EXAMINER  
6/26/07